

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA No. 2168/Del/2022
(Assessment Year : 2019-20)

Krishna Prakashan Media Pvt. Ltd., 11, Krishna House Shivaji Road Meerut, Meerut-250 001 PAN No. AAACK 9668 B (APPELLANT)	Vs.	ITO Ward – 1(1)(3), Uttar Pradesh (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	15.12.2022
Date of Pronouncement:	19.01.2023

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals), Delhi, dated 01.08.2022 in DIN and Order No. ITBA/NFAC/S/250/2022-23/1044403913(1), relating to the A.Y. 2019-20 passed under section 250 of the I.T. Act, 1961.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company who is stated to have filed its return of income for A.Y. 2019-20 on 14.03.2020 declaring total income of Rs.12,66,197/-. The return of income was initially processed u/s 143(1) of the Act. Thereafter, a rectification order was passed on 17.08.2020 wherein AO disallowed the claim of Rs.3,44,271/- u/s 36(1)(va) of the Act on account of late deposit of employees contribution of PF & ESI. Aggrieved by the order of AO, assessee filed an appeal before NFAC wherein it was *inter alia* submitted that the employees contribution was deposited well before the due date of filing of return of income. CIT(A) did not agree with the contentions of the assessee and by applying the amendments brought in by the Finance Act, 2021 and other reasons upheld the order of the AO. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

- “1. *Whether in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in sustaining an addition of Rs.3,44,271/- to the income of the assessee u/s 36(1)(va) of the Act on account of sum received from employees as contribution to PF and ESI to the extent not deposited before due date of the respective Act.*
2. *Whether in the facts and circumstances of the case, that Ld CIT(A) has erred in not considering the fact that the assessee company has deposited the aforesaid amount of contribution well before due date of filing the return of income and provisions of Sec 43B override any other provisions of the Act.*
3. *Whether in the facts and circumstances of the case, the Ld CIT(A) has also erred in applying the amendments brought in by the Finance Act 2021 (effective from A.Y. 2021-22 and subsequent assessment years) retrospectively for earlier year i.e. assessment year 2019-20.*

4. *That, Hon'ble Supreme Court in the case of CIT vs. Vinay Cement Ltd. has clarified that no disallowance could be made if the payments are made before the due date of filing the return of income.. The aforesaid observation was given on 07.03.2007 while deciding a special leave petition filed by the department against the High Court Order dt. 26.0.2006 in ITA No.2/05, ITA No.56/03 and ITA No.80/03 of the High Court of Guwahati, Assam. Thus, in view of the aforesaid legal prepositions, the impugned addition of Rs.3,44,271/- deserves to be deleted.*
5. *That the appellant craves leave to add, amend, modify or alter any ground of appeal on or before the date of hearing."*

4. Though the assessee has raised various grounds but the sole controversy is with respect to the addition made u/s 36(1)(va) of the Act.

5. On the date of hearing none appeared on behalf of the assessee but since the issue raised in the present appeal appears to be a covered issue by the decision of Hon'ble Apex Court, I, therefore, proceed to dispose of the appeal *ex parte qua* the assessee, after considering the submissions of Learned DR and the material on record.

6. From the documents available on record, I find that sole grievance of the assessee is with respect to the addition of Rs.3,44,271/- made u/s 36(1)(va) of the Act. It is the contention of the assessee that though there was delay in depositing the employees contribution to PF and ESI before the due date

prescribed but however all the dues have been deposited with the appropriate authorities before the filing of return of income and therefore no disallowance u/s 36(1)(va) of the Act is called for.

7. Before me, Learned DR supported the order of lower authorities and submitted that in view of the decisions of Hon'ble Apex Court in the case of **Checkmate Services Pvt. Ltd. and others vs. CIT & others (2022) 448 ITR 518 (SC)** no interference to the order of lower authorities is called for.

8. I have heard the Learned DR and perused the material on record. The issue in the present ground is with respect to the disallowance u/s 36(1)(va) of the Act on account of delayed deposit of employees' contribution of PF/ESI. It is an undisputed fact that the amount of PF/ESI contribution of employees was deposited after the due date prescribed but was deposited before the due date of filing of return of income. I find that Hon'ble Supreme Court in the case of **Checkmate Services Pvt. Ltd. (supra)** has held that the contribution by the employees to the relevant funds is the employer's income u/s 2(24)(x) of the Act and the deduction for the same can be allowed only if such amount is deposited in the employee's account in the relevant fund before the date stipulated under the respective Acts. Thus the deduction u/s 36(1)(va) of the Act can be allowed only if the employees' share in the relevant funds is deposited by the employer before the due date stipulated in respective Acts. I am of the view that the ratio of the aforesaid decision of Hon'ble Apex

Court is applicable to the present facts. I, therefore, following the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra) find no reason to interfere with the order of lower authorities and **thus the ground of assessee is dismissed.**

9. In the result, appeal of assessee is dismissed.

Order pronounced in the open court on 19.01.2023

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 19.01.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI